IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 6022 OF 2006.

Smt. Khatija I. Maniyar & ors. ... Petitioners.
V/s.
Smt. Rashida Karim Shaikh & ors.... Respondents.

Ms. Vaideli Mhaispurkar for the petitioners.

CORAM : V.C.DAGA, J.

DATED : 11.9..2006.

P.C. :

. Heard learned Counsel for the petitioners.

Perused petition.

2. This petition is directed against the order dated 10.7.2006 passed by the Additional District Judge, Kalyan, whereby appeal challenging the decree of eviction passed by the trial Court, on the ground of bonafide need of the respondent-landlord came to be dismissed. Learned Counsel appearing for the petitioner submits that in view of the withdrawal of the earlier suit, present suit was not maintainable. There is no material on record to show that such contention was raised before the lower appellate Court. There is no complaint in the petition that this contention was raised but the lower appellate Court did not deal with it. In this view of the matter, this contention cannot be entertained in the writ jurisdiction of this Court for want of challenge in this behalf before the lower appellate

Court.

3. Learned Counsel for the petitioner further submits that bonafide need of the landlord has not been proved. During the course of hearing, I was taken through the evidence which was available in the form of paper book produced by the Counsel for the petitioner. From the evidence, it is clear that the landlord has led evidence to prove his bonafide need with respect to the suit premises. Both the Courts below have recorded concurrent findings of fact that the landlord has proved his bonafide need. The said finding can be supported on the basis of evidence available on record.

4. So far as hardship is concerned, it has come on record that petitioners have two storeyed house along with a spacious shop on the ground floor of the premises owned by Grampanchayat. Additional or alternate acquisition of premises may not be a ground for evicting tenant occupying commercial premises. However, for considering comparative hardship, if decree for eviction from the commercial premises on the ground of bonafide need is to be passed, then Courts can certainly take into account availability of other commercial premises with the tenant. The Courts below were, therefore, perfectly justified in taking into account the acquisition of

the additional premises to judge the comparative hardship and reach to the conclusion that the tenant shall not suffer any hardship if eviction decree is passed, and to further hold that if no such decree is passed then the landlord will suffer undue hardships.

5. This Court not being a Court of appeal, is not expected to reappreciate the evidence in view of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576,** (para 9), wherein following observations were made:

> . " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

6. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the Courts below, it is very

difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

7. In the above view of the matter, petition is without any substance. The same is liable to be dismissed.

8. In the result, petition is dismissed in limine with no order as to costs.

9. At this stage, learned Counsel for the petitioners seeks 8 weeks time to vacate the suit premises for approaching higher forum and prayed for stay of execution of decree for 8 weeks from today. Considering the prayer made, respondents not execute the decree for a period of 8 weeks, subject to respondents filing usual undertaking in this Court,

with copy to respondents, duly signed by all occupants of the premises, to the effect that in the event the petitioners are not successful in the higher forum, they will vacate and hand over vacant and peaceful of the suit premises to the respondents, without any excuse or demure and that they shall not create any third party interest in respect of the suit premises during this period. Undertaking to be filed within two weeks from today.

10. Needless to mention that in event of failure on the part of the petitioners to file undertaking as indicated above within 2 weeks from today, it would be open for the respondents- decree holder to execute the decree in accordance with law.

(V.C. DAGA,J.)